IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.566 OF 2004
IN
NOTICE OF MOTION NO.2156 OF 2002
IN
L.C. SUIT NO.620 OF 1980

Minerals & Metals Trading
Corporation of India Limited .. Appellant.
V/s.
The Board of Trustees of the
Port of Bombay & Another .. Respondents.

Mr.H.J. Thakkar, Senior counsel with Mr.A.I. Talegaonkar i/b. B.K. & Gardharlal for the appellant.

Mr.E.P. Bharucha, Senior counsel with U.J. Makhija and Ms.K. Bharucha i/b. Mulla & Mulla for respondent No.1.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 13TH SEPTEMBER, 2004.

P.C. :

Heard.

2. The learned senior for the appellant (original defendant No.2) contended that the application by the respondent No.1 (original plaintiff) under Section 151 of the Civil Procedure Code for setting aside the order dated August 2, 2002 was not maintainable in law. If the original plaintiff had any grievance with regard to the order

dated August 2, 2002, the remedy available to the original plaintiff was to file appeal against the drawn up decree and raise therein the ground that the order dated August 2, 2002 recording satisfaction of the suit suffered from legal infirmities.

3. The contention of the learned senior counsel for the appellant being of substance, the learned senior counsel for the original plaintiff - respondent No.1 herein prayed that the notice of motion No.2156 of 2002 be permitted to be withdrawn with liberty to the original plaintiff to prefer appeal against the decree drawn as per order dated August 2, 2002. Mr.Bharucha also prayed that the original plaintiff be permitted to challenge the legality of the order dated August 2, 2002 in that appeal.

4. The course suggested by the learned senior counsel for the original plaintiff - respondent No.1 is fair and reasonable. The learned senior counsel for the appellant - original defendant No.2 also made a statement before us that in the event of such appeal being filed by the original plaintiff - respondent No.1 herein, the present appellant - original defendant No.2 shall not raise any objection

about the limitation.

5. We, accordingly, dispose of the appeal by following order.

i) The notice of motion No.2156 of 2002 taken out by the original plaintiff - respondent No.1 is allowed to be withdrawn.

ii) Upon withdrawal of the notice of Motion No.2156 of 2002 the impugned order dated March 31, 2002 is rendered ineffective and infructuous.

iii) The present appeal is also rendered infructuous for the aforestated reasons.

iv) Liberty to the original plaintiff - respondent No.1 to prefer appeal against the decree and challenge the legality of the order dated August 2, 2002 in that appeal.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)